



Entered on Docket  
September 15, 2009

A handwritten signature in black ink, appearing to read "Michael S. McManus".

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Hon. Michael S. McManus  
United States Bankruptcy Judge

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UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re ) Case No. 09-51635  
DENNIS and SUZANNE ) Chapter 13  
FITZPATRICK, ) Date: September 4, 2009  
Debtor. ) Time: 1:30 p.m.  
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**MEMORANDUM**

Movant Deutsche Bank National Trust Company, etc., seeks relief from the automatic stay with respect to real property located in Reno, Nevada.

Neither the debtor nor the trustee have filed written opposition within 15 days after service of the motion as required by Local Bankruptcy Rule 9014(d)(1). This is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo),

1 468 F.3d 592 (9<sup>th</sup> Cir. 2006). Therefore, the defaults of the  
2 above-mentioned parties in interest are entered and the matter  
3 will be resolved without oral argument.

4 The motion will be granted pursuant to 11 U.S.C. § 362(d)(1)  
5 to permit the movant to conduct a nonjudicial foreclosure sale  
6 and to obtain possession of the subject property following sale.

7 The movant holds a claim secured by a deed of trust that  
8 encumbers the debtor's real property. The plan, which identifies  
9 the holder of this claim as Wells Fargo Mortgage, requires that  
10 the post-petition note installments be paid directly to the  
11 movant by the debtor. In breach of the plan, the debtor failed  
12 to pay approximately three monthly installments to the movant.  
13 This is cause to terminate the automatic stay. See Ellis v. Parr  
14 (In re Ellis), 60 B.R. 432, 434-435 (B.A.P. 9<sup>th</sup> Cir. 1985).

15 Because the movant has not established that the value of its  
16 collateral exceeds the amount of its secured claim, the court  
17 awards no fees and costs. 11 U.S.C. § 506(b).

18 The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) will not be  
19 waived.

20 Counsel for the movant shall lodge a conforming order.

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